

ESTATE OF LOUISE POAFPYBITTY WADE : Order Docketing Appeal, Vacating
: Order, and Remanding Case to
: Administrative Law Judge
:
: Docket No. IBIA 00-55
:
: April 25, 2000

Appellant Linda Poafpybitty Beaver has filed a notice of appeal from a February 17, 2000, Order Docketing and Dismissing Petition for Rehearing issued by Administrative Law Judge Richard L. Reeh in the estate of Louise Poafpybitty Wade (Decedent). Appellant states that she is the daughter of Decedent's brother Carl Poafpybitty. For the reasons discussed below, the Board docketed this appeal, vacates Judge Reeh's February 17, 2000, order, and remands this case to him for consideration of the petition for rehearing.

On February 11, 1999, Judge Reeh issued an Order Approving Will in Decedent's estate. A petition for rehearing was filed by Appellant's mother, Etheline Poafpybitty, on behalf of her husband Carl.

Judge Reeh dismissed the petition on February 17, 2000. He held that Etheline lacked standing because she was neither a presumptive nor an actual heir and was not a will beneficiary. He then stated: "Moreover, no regulation or case authorizing any individual to submit a Petition for Rehearing 'for' or 'on behalf of' someone else has been found."

43 C.F.R. Part 1 governs practices before the Department of the Interior. 43 C.F.R. § 1.3 specifies which individuals may practice in Departmental proceedings. Subsection 1.3(b)(3) provides: "An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) A member of his family."

Carl Poafpybitty clearly had standing to file a petition for rehearing. Under 43 C.F.R. § 1.3(b)(3), his wife Etheline was authorized to represent him in this matter. Judge Reeh erred in failing to recognize Etheline's authority to represent her husband.

The February 17, 2000, order indicates that Carl died after the petition for rehearing was filed. Upon Carl's death, Etheline became a presumptive heir of Carl's, as did Appellant. Because Carl was Decedent's heir, both Appellant and Etheline now have interests in Decedent's estate sufficient to allow them to seek rehearing and/or file a notice of appeal.

For this reason, and because Etheline was authorized to represent Carl at the time the petition for rehearing was filed, Judge Reeh's February 17, 2000, order must be vacated.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, Judge Reeh's February 17, 2000, order is vacated, and this case is remanded to him for a decision on the merits of the petition for rehearing.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge